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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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MAR 10 200

FILE: [redacted] Office: ATHENS, GREECE Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Athens, Greece and is now before the Administrative Appeals Office (AAO) on appeal. A previous waiver application was denied and an appeal was subsequently dismissed by the AAO on June 28, 2001. The current appeal will be dismissed.

The applicant is a native and citizen of Greece who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the beneficiary of an approved petition for alien relative filed by his U.S. citizen spouse. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside with his U.S. citizen spouse in the United States.

The Officer in Charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon his qualifying family member. The application was denied accordingly. *See Officer in Charge Decision* dated June 5, 2003. The Officer in Charge denied a previously submitted application on December 20, 2000 and an appeal was dismissed by the AAO on June 18, 2001.

On appeal, the applicant asserts that Citizenship and Immigration Services (CIS) misapplied the extreme hardship standard set forth in section 212(h) of the Act, and that the evidence in the record establishes extreme hardship to his U.S. citizen spouse.

Section 212(a)(2) of the Act states in pertinent part, that:

> (A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
> >
> > . . . .

Section 212(h) of the Act provides, in pertinent part, that:

> (h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . . .
>
> > (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

The record reflects that the applicant was convicted of third degree arson on November 30, 1990 in Nassau County, New York. Prior to sentencing the applicant fled the United States for Greece and the State of New York issued a bench warrant. The U.S. Department of Justice pursued the case with the Greek government, and in 1996 the applicant was sentenced to five years imprisonment for the charge of arson. The applicant appealed the sentence and it was reduced to two years imprisonment with the right to pay a fine. The applicant is inadmissible to the United States due to his conviction of a crime involving moral turpitude (arson).

Section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

In the present case, the applicant must demonstrate extreme hardship to his U.S. citizen spouse.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extend of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, the applicant asserts that extreme hardship would be imposed on his spouse (Mrs. [redacted] due to her medical condition. To support his assertion the applicant submitted several affidavits from himself, his spouse and several medical reports. In their affidavits the applicant and Mrs [redacted] state that her medical condition cannot be treated in Greece, she must travel to the United States for treatment and that the applicant must be with her in order to provide financial and psychological support. According to the documentation submitted Mrs. [redacted] suffers from a special type of thrombocytosis for which she is observed and undergoes frequently hematological tests. A note from a psychologist dated July 12, 2002 states that Mrs. [redacted] presented symptoms of "anxiety syndrome" with concurrent depressive elements. The psychologist's note does not mention if any treatment or medication was prescribed for Mrs. [redacted] only that "...she would like to travel to the U.S.A., where she hopes that the change of environment and further evaluation of her condition might affect favorably her general status..." Although the applicant and Mrs. [redacted] in their affidavits assert that there is no treatment available for her in Greece, this assertion is not supported by any of the doctors who submitted documentation regarding Mrs [redacted] medical condition. Additionally, the panel physician of the U.S. Embassy reviewed the reports submitted by the applicant and concluded that therapeutic options for thrombocytosis are available in Greece. The affidavits claim that a hospital in the United States will be able to cure her condition, but provided no documentation to support that assertion, nor did they provide evidence that Mr. [redacted] presence in the United States would enable his wife to pay the $8,000 to $10,000/per month medical expenses this treatment would require.4

The record reflects that Mr [redacted] and her children decided to relocate to Greece in 1991 in order to reside with the applicant. In the previous waiver application Mrs [redacted] indicated that she wanted to return to the United States because she was diagnosed with rheumatoid arthritis and her children will be deprived educational opportunities.

There are no laws that require her live abroad. In *Silverman v. Rogers*, 437 F. 2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more that to say that the residence of one of the marriage partners may not be in the United States." The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represent the type of inconvenience and hardship experienced by the families of most aliens being deported. *See Shooshtary v. INS,* 39 F. 3d 1049 (9th Cir.

1994). As U.S. citizens the applicant's wife and her children are free to travel to the United States at any time.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were not permitted to travel to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.